

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Freemart Financial Services Inc.
("Employer ")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Richard S. Longpre

FILE NO.: 96/598

DATE OF HEARING: **FEBRUARY 18, 1997**

DATE OF DECISION: **March 3, 1997**

DECISION

APPEARANCES

Mr. Laurance Freeman for the Employer
Ms. Elayna L. Chambers for herself

OVERVIEW

The Employer filed an appeal, pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), seeking review of Determination No. CDET 004063 dated September 23, 1996. The Delegate of the Director (the “Delegate”) found that the Employer owed Elayna Chambers wages for overtime hours worked and compensation equal to one week’s wages for her termination. The Determination set out an amount owed of \$2,213.02.

The Employer argued that Chambers was repeatedly told not to work overtime hours. The Employer also argued that Chambers quit her employment with the Employer and therefore, was not owed a one week severance payment.

PRELIMINARY ISSUES

Two preliminary matters arose in the hearing. First, the Determination sets out the Employer's failure to cooperate in the Delegate’s investigation of Chambers’ complaint: specifically, Employer records were requested but never produced. A calculation sheet of hours worked by Chambers was sent to the Employer but a reply submission was never filed. The Employer was told the date the Determination would be issued but no written information was provided prior to that date. The Employer’s only involvement were two telephone conversations with the Delegate.

The Tribunal has dismissed applications of appeal where the appellant failed to participate in the original investigation of the Delegate: see *Kaiser Stables Ltd.* (1997) BCEST #D58/97. The Tribunal will not permit a party to make excuses for its refusal to participate. We recognize, however, that not all parties are sufficiently organized or sophisticated to deal with Tribunal matters. Some latitude will be given the applicant and the respondent in these circumstances. That was the case here. The records being sought in the investigation were apparently not available. The Employer could only offer its understanding of events. I accepted that it was appropriate to hear from the Employer relevant information that was available at the hearing.

The second preliminary matter is an argument by the Employer concerning material the Delegate sent Chambers prior to the hearing. At the commencement of the hearing, Chambers submitted a letter she received from the Delegate. The Employer argued that the

letter assisted Chambers with the merits of the case. Equally important, the letter was not sent to the Employer. The Employer argued that was inappropriate. The Delegate did not attend the appeal hearing.

The letter primarily addressed the hearing process and the assistance the chair of the hearing can give a party to the hearing. I agree with the Employer that the letter should have been sent to both parties. The chair will assist both parties, when necessary, in a hearing. This helps with the hearing process and helps focus the appeal on relevant areas of appeal. Most of the Delegate's letter was of great assistance in this regard.

I also agree with the Employer, however, that such a letter should not have assisted Chambers in developing arguments that responded to the Employer's appeal submission. For example, the letter gave advice regarding the arguments Chambers should make in responding to the appeal of overtime hours worked: "If he paid you for all hours worked he has condoned the work and the *Act* now gives direction as to what the proper rates of pay are(Section 28 attached)." Similarly, the letter read: "Only you can reinforce your position as to what did occur however, the evidence still supports that you were terminated and points out the employer's apparent inconsistencies and questions his credibility."

I accept that the letter crossed the boundary of the quasi-judicial role of the Director's Delegate in these proceeding. The Employer was granted an adjournment to prepare for the hearing.

ISSUES TO BE DECIDED

Did Chambers work overtime hours during her employment with the Employer? Did Chambers quit or was her employment terminated without just cause?

FACTS

The facts settle this case.

I will first deal with the Employer's appeal of the overtime hours found owing to Chambers. The Employer called Murray Lightman to give evidence at the hearing. Lightman had been Chambers' supervisor during her employment as a bookkeeper with the Employer. He acknowledged that Chambers had worked overtime hours while working with the Employer. He explained that Chambers was to take paid time off as compensation. Such time off never occurred. He did not dispute that Chambers was owed for overtime hours worked. The appeal of unpaid overtime wages of \$1,616.68 is dismissed.

The second issue is the Determination's awarding of one week severance. Again, the undisputed facts decide the issue.

Chambers' last day of work was March 31, 1996. Prior to this date, Chambers had a dispute with an employee. She tried to contact Lightman. She left a message on his telephone answering service that she had decided to quit. She then had conversations with Freeman and a Mr. Wood, a consultant with management, both of whom convinced her to not quit. Chambers agreed and decided to continue working. Chambers telephoned Lightman and left another message explaining what happened and that she would continue to work at her job. Later, Lightman had a conversation with Freeman. It was decided that Chambers had quit and that she would not be permitted to return to work.

Perhaps there was some confusion, however, I am satisfied that the confusion was perpetuated by the Employer's conduct. The Employer refused Chambers' request to discuss the matter. On the facts before me, there is no dispute that Chambers did not terminate her employment. Chambers worked for the Employer for more than three months and was entitled to the compensation of \$527.28 as found in the Determination.

The Employer is directed to pay Chambers wages owing of \$2,213.02 plus interest as set out in Section 88 of the *Act*.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determination No. CDET 004063 be confirmed

Richard S. Longpre
Adjudicator
Employment Standards Tribunal